

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ELSMERE PARK CLUB, L.P., a  
Delaware limited partnership,

Plaintiff,

v.

TOWN OF ELSMERE, a Delaware  
municipal corporation, ELLIS  
BLOMQUIST, EUGENE BONEKER,  
and JOHN GILES

Civil Action No. 04-1321 SLR

Defendant.

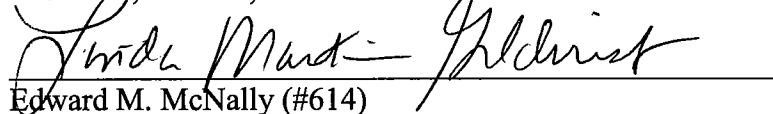
**NOTICE OF LODGING  
OF PROOF OF SERVICE OF SUBPOENA**

TO: David S. Eagle, Esquire  
Klehr, Harrison, Harvey,  
Branzburg & Ellers LLP  
919 Market Street, Suite 1000  
Wilmington, DE 19801  
Attorneys for Defendants and  
Third-Party Plaintiffs Elsmere Park Club, L.P. and LCL Management, L.L.C.

PLEASE TAKE NOTICE that Plaintiff lodges herewith the proof of service of  
subpoena to the following:

Delaware Real Estate Investment Fund LLC  
(JAB Properties Management, Inc.)  
c/o Corporation Trust Co.  
1209 Orange Street  
Wilmington, DE 19801

MORRIS, JAMES, HITCHENS & WILLIAMS LLP



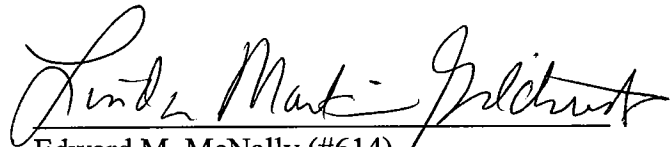
Edward M. McNally (#614)  
Linda Martin Gilchrist (#3973)  
222 Delaware Avenue, 10<sup>th</sup> Floor  
Wilmington, Delaware 19801  
(302) 888-6800  
[emcnally@morrisjames.com](mailto:emcnally@morrisjames.com)  
[lgilchrist@morrisjames.com](mailto:lgilchrist@morrisjames.com)  
Attorneys for Defendant

August 8, 2005

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2005, I electronically filed the Notice of Lodging of Proof of Service of Subpoena with the Clerk of Court using CM/ECF, which will send notification of such filing to the following:

David S. Eagle, Esquire  
Klehr, Harrison, Harvey,  
Branzburg & Ellers LLP  
919 Market Street, Suite 1000  
Wilmington, DE 19801  
Attorneys for Plaintiff Elsmere Park Club, L.P.

A handwritten signature in black ink, reading "Linda Martin Gilchrist". The signature is fluid and cursive, with the first name "Linda" being the most prominent.

Edward M. McNally (#614)  
Linda Martin Gilchrist (#3973)  
Morris, James, Hitchens & Williams LLP  
222 Delaware Avenue, 10th Floor  
Wilmington, DE 19801  
(302) 888-6800  
[emcnally@morrisjames.com](mailto:emcnally@morrisjames.com)  
[lgilchrist@morrisjames.com](mailto:lgilchrist@morrisjames.com)  
Attorneys for Defendant

AO 88 (Rev. 11/91) Subpoena in a Civil Case

# UNITED STATES DISTRICT COURT

## DISTRICT OF DELAWARE

ELSMERE PARK CLUB, L.P.,  
a Delaware limited partnership,

Plaintiff,

.  
v.

### SUBPOENA IN A CIVIL CASE

Civil Action No. 04-1321 SLR

TOWN OF ELSMERE, a Delaware municipal  
corporation, ELLIS BLOMQUIST, EUGENE  
BONEKER, and JOHN GILES

Defendants.

**TO:** Delaware Real Estate Investment Fund LLC  
(JAB Properties Management, Inc.)  
c/o Corporation Trust Co.  
1209 Orange Street  
Wilmington, DE 19801

☐ **YOU ARE COMMANDED** to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ **YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Records regarding the purchase and renovation of the Elsmere Park Apartments at 1410 Cypress Avenue, Elsmere, Delaware

PLACE

Linda Martin Gilchrist, Esquire  
Morris, James, Hitchens & Williams LLP  
222 Delaware Ave., 10<sup>th</sup> Floor  
P.O. Box 2306  
Wilmington, DE 19899-2306

DATE AND TIME

August 12, 2005

☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorney for Defendants

August 5, 2005 by 5:00 p.m.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Linda Martin Gilchrist, Esq., Morris, James, Hitchens & Williams LLP  
222 Delaware Ave., 10<sup>th</sup> Floor  
P.O. Box 2306, Wilmington, DE 19899-2306; (302) 888-6949

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

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**PROOF OF SERVICE**


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DATE

PLACE

**SERVED****8/5/05****1209 ORANGE ST. WILMINGTON, DE**

SERVED ON (PRINT NAME)

MANNER OF SERVICE

**DELAWARE REAL ESTATE INVESTMENT FUND LLC****ACCEPTED BY BRIAN PENROD (PROCESS AGENT)**

SERVED BY (PRINT NAME)

TITLE

**BARRY EVELAND****PROCESS SERVER**


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**DECLARATION OF SERVER**


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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

**8/5/05**

DATE

SIGNATURE OF SERVER

**BRANDYWINE PROCESS SERVERS, LTD.**  
**P.O. BOX 1360**  
**WILMINGTON, DE 19899-1360**  
**302-475-2600**

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**Rule 45, Federal Rules of Civil Procedure, Parts C & D-**
**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials; or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(h) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that,

subject to the provisions of clause (c)(3)(B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

**(B) If a subpoena**

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.